

No. 11798

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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PUEBLO TRADING CO., a corporation,  
Appellant,  
vs.

EL CAMINO IRRIGATION DISTRICT, a public  
corporation; B. A. OSBORN, S. E. AYER,  
J. P. BURTON, WALTER MAYES and  
WALTER BUNTING, Members of the Board  
of Supervisors of Tehama County, and W. E.  
ROCHFORD, Assessor of Tehama County,  
California,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Northern Division

JAN 6 1948

PAUL P. O'BRIEN, .  
CLERK



No. 11798

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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PUEBLO TRADING CO., a corporation,  
Appellant,  
vs.

EL CAMINO IRRIGATION DISTRICT, a public  
corporation; B. A. OSBORN, S. E. AYER,  
J. P. BURTON, WALTER MAYES and  
WALTER BUNTING, Members of the Board  
of Supervisors of Tehama County, and W. E.  
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Transcript of Record

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Upon Appeal from the District Court of the United States  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## ATTORNEYS

W. COBURN COOK, ESQ.,  
Berg Bldg.,  
Turlock, Calif.,  
Attorney for Appellant.

L. C. SMITH, ESQ.,  
Redding, Calif.,

DOWNEY, BRAND, SEYMOUR & ROHWER,  
Capital National Bank Bldg.,  
Sacramento, Calif.,

EDMUND M. MOOR, ESQ.,  
District Attorney,  
Red Bluff, Calif.,  
Attorneys for Appellee.



In the District Court of the United States  
Northern District of California, Northern Division  
No. 5082 Civ.

PUEBLO TRADING CO., a Corporation,  
Plaintiff,

vs.

EL CAMINO IRRIGATION DISTRICT,  
a Public Corporation,  
Defendant.

### COMPLAINT

The plaintiff complains and alleges:

#### I.

That plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Nevada and resident therein.

#### II.

That the defendant is a public corporation, namely, an irrigation district organized and existing under and by virtue of "the California Irrigation District Act" of the State of California, being California Statutes 1897, page 254, as amended, and a resident of the State of California, and having its location and principal place of business at or near the town of Gerber in the County of Tehama, in said Northern District of California, Northern Division. [1\*]

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\* Page numbering appearing at foot of page of Reporter's certified Transcript of Record.



## III.

That the amount in controversy, and which is the subject of this action, is upwards of \$3000.00, exclusive of interest.

## IV.

That heretofore the defendant Irrigation District duly issued, sold and delivered its interest bearing coupon general obligation bonds in the principal amount of \$430,000.00, or thereabouts, which said bonds were each in the principal amount of \$1000, and bore interest at the rate of 6 per cent per annum from date of issuance until payment, which said interest was represented by coupons due semi-annually from date of issuance to date of maturity.

## V.

That the plaintiff is the owner and holder of certain of said interest bearing bonds in the principal amount of \$53,000.00 all of which became due, and although demand therefor has been made for payment, are unpaid, and which said bonds are more particularly described as follows, namely:

Bonds No. 27 to 36 inclusive, which became due January 1, 1939, and were presented for payment to the Treasurer of said Irrigation District, and stamped and registered for non-payment, under the provisions of Sections 24504 and 24505 of the Water Code of the State of California, and

Bonds No. 37 to 42 inclusive and No. 46 to 50 inclusive which matured January 1, 1940, and were

presented as aforesaid to the said Treasurer and stamped on January 2, 1940, and

Bonds No. 51 to 56 inclusive and No. 59 to 65 inclusive which fell due January 1, 1941, and were presented as aforesaid and stamped January 2, 1941, and

Bonds No. 66, 67 and 68 due January 1, 1942, which were presented and stamped as aforesaid January 1, 1942, except

That of the aforesaid bonds No. 62 to 65 were presented [2] and stamped on January 16, 1941, and

Bonds No. 7, 8 and 11, which became due January 1, 1937, were presented and stamped as aforesaid June 24, 1937, and

Bonds No. 17 to 23 inclusive, which became due January 1, 1938, were presented and stamped as aforesaid January 3, 1938, and

Also Bond No. 74 which became due January 1, 1942, and Bonds No. 103, 104, 106, 107 and 108, which became due January 1, 1944, and have never been stamped under the provisions of said sections of the Water Code or otherwise.

## VI.

That the whole of said bonds and each of them is due, owing and unpaid, and that the said bonds which were registered as aforesaid and stamped, bear interest at the rate of 7 per cent per annum from their respective dates of presentation and registration, and that said bonds No. 74, 103, 104, 106, 107 and 108 bear interest at the rate of 6 per

cent per annum from their respective dates until maturity, and that none of said interest has been paid although demand therefor has been made.

Wherefore, plaintiff prays for judgment against the defendant for the sum of \$53,000 principal, together with interest at 7 per cent per annum on the said registered bonds from their respective dates of presentation and stamping thereof to date of judgment, and at the rate of 6 per cent per annum on the said unregistered bonds from the date of maturity thereof until date of judgment, for plaintiff's costs of suit, and for such other relief as may be proper.

W. COBURN COOK,  
Attorney for Plaintiff.

[Endorsed]: Filed Jan. 1, 1945. [3]

Office of the Sheriff  
of the County of Tehama—ss.

I hereby certify that I received the annexed Summons on the 6th day of January, A.D. 1945, and that I personally served the said Summons and a copy of the complaint therein referred to, upon the hereinafter named defendant, personally, in the County of Tehama, State of California, by delivering to and leaving with each of said hereinafter named defendant a copy of said Summons and a copy of said Complaint at the time set opposite his name respectively.

Name of Defendant served: Roy Pyle as Secretary of the El Camino Irrigation District, a public corporation.

Time of service: Jan. 10, 1945.

Dated at Red Bluff this 10th day of January, 1945.

J. N. FROOME,  
Sheriff,

By EDWARD MOLLER,  
Deputy Sheriff. [4]

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In the District Court of the United States  
Northern District of California, Northern Division

No. 5082 Civ.

PUEBLO TRADING CO., a Corporation,  
Plaintiff,

vs.

EL CAMINO IRRIGATION DISTRICT,  
a Public Corporation,  
Defendant.

### JUDGMENT BY DEFAULT

In this action the defendant El Camino Irrigation District having been served with summons and complaint, and having failed to answer the complaint or to appear herein, and the time for answering and appearing having expired, and the default of said defendant having been duly entered



upon application of plaintiff by and through plaintiff's attorney W. Coburn Cook, Esq.

It Is Hereby Ordered, Adjudged, and Decreed that the plaintiff Pueblo Trading Co., a corporation, have and recover from the defendant El Camino Irrigation District, a Public Corporation, the sum of \$53,000.00 principal and \$18,181.65 interest, plus costs in the sum of \$19.00, and that said amounts shall bear interest from the date hereof until paid at the rate of 7 per cent per annum.

It Is Further Ordered that the defendant El Camino [5] Irrigation District make provision for the payment of this judgment by levying and collecting assessments against the lands in said irrigation district in the manner provided under the provisions of Division 11 of the Water Code of the State of California, and that upon the failure or refusal of the defendant and its officers to make such provision, that the Board of Supervisors and other officers of the County of Tehama, State of California, make provision for the payment of this judgment by levying and collecting assessments against the lands in said district in the manner provided by the said Division 11 of the Water Code of the State of California, and that for that purpose this Court retain jurisdiction of the cause and that the plaintiff may apply to the Court for such further relief as may be appropriate to obtain satisfaction of the judgment.

It Is Further Ordered that the plaintiff is entitled to have this judgment paid out of funds

available for payment under the provisions of said Water Code in the order in which the bonds, upon which this action is brought, were presented to the Treasurer of said district as alleged in paragraph V of the complaint, and the Court determines that the dates of presentation of said bonds are as follows:

Bonds 27 to 36 inclusive, Tot. Prin. Amount \$10,000.00 presented January 1, 1939.

Bonds 37 to 42 and 46 to 50 inclusive, Tot. Prin. Amount \$13,000.00, presented January 2, 1940.

Bonds 51 to 56 inclusive and 59 to 61 inclusive, Totl. Prin. Amount \$7,000.00, presented January 2, 1941.

Bonds 66, 67, 68, Tot. Prin. Amount \$3,000.00, presented January 1, 1942.

Bonds 62 to 65 inclusive, Tot. Prin. Amount \$4,000.00, presented January 16, 1941.

Bonds 7, 8 and 11, Tot. Prin. Amount \$3,000.00, presented [6] June 24, 1937.

Bonds 17 to 23 inclusive, Tot. Prin. Amount \$7,000.00, presented January 3, 1938.

Bonds 74, 103, 104, 106, 107, 108, Tot. Prin. Amount \$6,000.00, were not presented, but priority is established as of the date of the entry of this judgment.

Dated, February 13th, 1945.

MARTIN I. WELSH,

Judge U. S. District Court.

[Endorsed]: Filed Feb. 13, 1945. [7]

Office of the Sheriff  
of the County of Tehama—ss.

I hereby certify that I received the annexed copies of Judgment on the 2nd day of Sept., A.D. 1946, and that I personally served the said copies of judgment upon the hereinafter named defendants, personally, in the County of Tehama, State of California, by delivering to and leaving with each of said hereinafter named defendants a copy of said copies of judgment at the time set opposite their names respectively.

Name of defendants served: L. F. Carpenter as Director of the El Camino Irrig. District; Ludwig Witte as Director of the El Camino Irrig. District.

Time of service: Sept. 27, 1946.

Dated at Red Bluff, California, this 27th day of Sept., 1946.

J. N. FROOME,  
Sheriff.

By EDWARD MOLLER,  
Deputy Sheriff. [8]



Office of the Sheriff  
of the County of Tehama—ss.

I hereby certify that I received the annexed Certified copies of Judgment on the 2nd day of Sept., A.D. 1946, and that I personally served the said Judgments upon the hereinafter named defendants, personally, in the County of Tehama, State of California, by delivering to and leaving with each of said hereinafter named defendants a copy of said Judgments at the time set opposite their names respectively.

Name of defendant served: Arthur Ludeman as District Attorney of Tehama County; W. E. Rochford as Assessor of Tehama County.

Time of service: September 5, 1946.

Name of defendant served: Crescent Upton as Treasurer of Tehama County.

Time of service: September 12, 1946.

Dated at Red Bluff, California, this 5th day of September, 1946.

J. N. FROOME,  
Sheriff. [9]

Office of the Sheriff,  
of the County of Tehama—ss.

I hereby certify that I received the annexed Judgment by Default on the 19th day of August, A.D. 1946, and that I personally served the said Judgment upon the hereinafter named defendants, personally, in the County of Tehama, State of California, by delivering to and leaving with each of said hereinafter named defendants a copy of said Judgment at the time set opposite their names respectively.

Name of defendant served: B. A. Osborn as Chairman of the Board of Supervisors of Tehama County, and Sam Ayers, J. P. Burton, G. L. Childs and Walter Mayes as members of the Board.

Time of service: August 19, 1946.

Name of defendant served: Cornie Grootveld as a Director of the El Camino Irrigation District.

Time of service: August 28, 1946.

Dated at Red Bluff, California, this 28th day of August, 1946.

J. N. FROOME,  
Sheriff. [10]

[Title of District Court and Cause.]

## ORDER

Upon reading and filing the affidavit of W. Coburn Cook, Esq., on behalf of the plaintiff herein, and it appearing therefrom that the supervisors and officers of the County of Tehama, State of California, have failed and refused to carry out the judgment and order of this court requiring them to make provision for the payment of the judgment herein by the levy and collection of taxes and assessments, and good cause appearing therefor,

It Is Ordered that the said Board of Supervisors and officers of Tehama County, California, namely B. A. Osborn, S. E. Ayer, J. P. Burton, Walter Mayes and Walter Bunting, members of Tehama County Board of Supervisors, and W. E. Rochford, Assessor of Tehama County, show cause before this court on the 18th day of August, 1947, at the hour of 3 o'clock p.m., in the Court Room of this Court in the Postoffice Building in Sacramento, California, why they and each of them should not be punished for contempt of court for disobedience of the judgment [11] made and entered herein on the 13th day of February, 1945, and why such further order in the premises should not be made as will insure the levy and collection of assessments for the satisfaction of the judgment herein.

This order may be served by the Sheriff of Tehama County and shall be so served at least ten days before the time of the hearing set forth above.

Dated, July 7, 1947.

DAL M. LEMMON,  
Judge, U. S. District Court.

[Endorsed]: Filed July 7, 1947. [12]

Office of the Sheriff  
of the County of Tehama—ss.

I hereby certify that I received the annexed Order on the 13th day of August, A.D. 1947, and that I personally served the said Order upon the hereinafter named defendant, personally, in the County of Tehama, State of California, by delivering to and leaving with each of said hereinafter named defendant a copy of said Order at the time set opposite his name respectively.

Name of defendant served: W. E. Rochford as County Assessor.

Time of service: August 13, 1947.

Dated at Red Bluff, California, this 13th day of August, 1947.

J. N. FROOME,  
Sheriff. [13]



[Title of District Court and Cause.]

### AFFIDAVIT

State of California,  
County of Stanislaus—ss.

W. Coburn Cook, being duly sworn, says:

He is attorney for the plaintiff Pueblo Trading Co. in this case; that on or about February 13, 1945, a judgment was entered in this Court against the defendant, which said judgment contained provisions requiring the Board of Supervisors and other Officers of the County of Tehama, State of California, to make provision for the payment of the judgment herein by levying and collecting assessments against the lands in the district as provided by Division 11 of the Water Code of the State of California; that thereafter a certified copy of said judgment was served upon the Board of Directors of defendant El Camino Irrigation District, said directors being Cornie Grootveld, L. F. Carpenter and Ludwig Witte; that a certified copy of said judgment was also served upon the Board of Supervisors of Tehama County, being B. A. Osborn, Sam Ayers, [14] J. P. Burton, G. L. Childs and Walter Mayes, and that a certified copy of said judgment was served upon Arthur Ludeman as District Attorney of Tehama County, W. E. Rochford as Assessor of Tehama County, Crescent Upton as Treasurer of Tehama County, all as appears

from affidavits of J. N. Froome, Sheriff, and Edward Moller, Deputy Sheriff of Tehama County, California. That there are three directors of El Camino Irrigation District.

That in January, 1947, a notice was served upon a majority of the Board of Supervisors of said county, which notice was in words and figures as set forth in Exhibit A hereunto annexed and made a part hereof by this reference.

That the Board of Supervisors of said county, the County Assessor, and Treasurer and Tax Collector, and the District Attorney aforesaid, as well as the Directors and Officers of the El Camino Irrigation District, have failed to make provision for the payment of the judgment herein by levying or collecting assessments against the lands in said district as provided in the Water Code of the State of California and refuse to do so.

Wherefore, plaintiff herein prays that an order be issued citing the supervisors and the aforesaid named officers of the County of Tehama to show cause before this court why they should not be punished for contempt of court for failure to carry out the orders of this court; and that such further order be made in the premises as will insure provision for payment of said judgment by levy and collection of taxes and assessments on the lands as said district as provided by law.

This affidavit is made by the attorney of record

for the plaintiff because he is better informed of the facts than the officers of the corporation.

W. COBURN COOK.

Subscribed and sworn to before me this 27th day of June, 1947.

[Seal]                      GILBERT MOODY,  
Notary Public in and for the County of Stanislaus,  
State of California.

[Endorsed]: Filed July 7, 1947. [15]

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[Title of District Court and Cause.]

### AFFIDAVIT

State of California,  
County of Stanislaus—ss.

H. R. Anderson, being duly sworn, says:

That he is Secretary of the Pueblo Trading Co., a Corporation, plaintiff in the above entitled action, and that said corporation is organized and incorporated under the laws of the State of Nevada and has its residence therein; and that the defendant El Camino Irrigation District is a public corporation of the State of California, which was organized under the provisions of Statutes 1897, page 254, as amended, and that said public corporation is located in and has its principal place of business in the County of Tehama, California;

That all of the facts set forth in the complaint are true and that the plaintiff is the owner and



holder of the bonds described therein in the principal face amount of \$53,000.00, and that said bonds are due, owing and unpaid, and became due upon the dates set forth in paragraph V of said complaint, and that those bonds, which were stated in said complaint to have been [16] presented for payment, were presented for payment at the time therein stated, and bear interest at the rate of 7 per cent from and after the dates whereon they were presented and up to the time of *their* being so presented bear interest at the rate of 6 per cent, and that those said bonds which were not presented for payment bear interest at the rate of 6 per cent from the date of their maturity until paid, and that the amount of said interest so due is the sum of Eighteen Thousand One Hundred Eighty-one and 65/100 Dollars (\$18,181.65).

H. R. ANDERSON.

Subscribed and sworn before me this 2nd day of February, 1945.

[Seal]     /s/ GILBERT MOODY,  
Notary Public in and for the County of Stanislaus,  
State of California.

[Endorsed]: Filed Feb. 9, 1945. [17]

[Title of District Court and Cause.]

DEMURRER TO AFFIDAVIT FOR  
ORDER TO SHOW CAUSE

The Supervisors and officers of the County of Tehama, State of California, demur to Plaintiff's affidavit for order to show cause on the following grounds:

I.

That judgment in the above entitled matter goes beyond the Complaint in that it directs the levy of an assessment to pay the judgment, and there appears to be nothing in the Complaint which supports such a decree.

II.

That the provisions of the Judgment concerning the levying and collecting of an assessment are beyond the prayer of the judgment and are therefore ineffective, particularly in view of the fact that neither the County nor any of the county officers were made parties to the proceedings or brought before the Court by any process whatsoever. [18]

III.

That it does not appear from the Affidavit of Plaintiff on file herein that plaintiff has pursued the remedy provided to it by Sections 26550 to 26553, inclusive, of the Water Code of the State of California.

Dated, August 11, 1947.

EDMUND M. MOOR,  
Attorney for Board of Supervisors of the County  
of Tehama.

[Endorsed]: Filed Aug. 14, 1947. [19]

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO  
ORDER TO SHOW CAUSE

State of California,  
County of Tehama—ss.

Edmund M. Moor, being first duly sworn, deposes and says:

That he is the duly elected, qualified and acting District Attorney of the County of Tehama and that as such District Attorney he is the official legal adviser of the Board of Supervisors of said County and of the officers of said County, and makes this affidavit for and on behalf of the Board of Supervisors and officers named in the Order to Show Cause issued by the above entitled court in this matter.

That for the reasons stated in the Board of Supervisor's Demurrer herein filed, and upon the advice of the office of the Attorney General of the State of California, embodied in that certain letter dated September 23, 1946, a copy of which is hereto attached, it was your affiant's advice to said Board of [20] Supervisors and to the officers of the County of Tehama that they do not at this time levy the assessment set forth in the judgment obtained in this matter on February 13, 1945.

That your affiant and Board of Supervisors and officers of the County of Tehama, hold this Court in the highest regard and refrain from carrying out

the order embodied in said judgment solely and only for the reason that they desire the opportunity to have their day in Court.

That the Board of Supervisors and the officers of Tehama County are of the opinion that it would be inequitable to levy an assessment based upon this judgment of \$50,000.00 when as a matter of fact, there are other outstanding bonds and interest on bonds in a far greater sum than is involved in this suit.

That in their opinion to levy an assessment at this time for the entire outstanding indebtedness would fly directly in the face of the controlling law on this subject as announced in the case of El Camino Land Corporation v. the Board of Supervisors of Tehama County, 43 Cal. App. 2nd. 351, and City of Asbury Park vs. Christmas, 78 Fed. 2nd, 1003, in which cases the Court held Writs of Mandate were denied solely because to have enacted the assessment would have produced economic chaos and would have been inequitable.

Wherefore your affiant prays that the Order to Show Cause heretofore issued in the above entitled matter be denied.

EDMUND M. MOOR.

Subscribed and sworn to before me, this 12th day of August, 1947.

[Seal] ALICE E. DAVIS,  
County Clerk in and for the County of Tehama,  
State of California.

[Endorsed]: Filed Aug. 14, 1947. [21]



[Letterhead Attorney General, State of California]

September 23, 1946.

Mr. W. E. Rochford  
Tax Collector  
Tehama County  
Red Bluff, California

Dear Walter:

While in Redding, you showed me a copy of a judgment in the case of Pueblo Trading Company, a corporation, vs. El Camino Irrigation District, a public corporation, No. 5082 District Court of the United States, Northern District, Northern Division, which judgment was a default judgment against the Irrigation District for \$53,000 principal, \$18,181.65 interest, plus \$19.00 costs. The judgment purported to direct the District to levy an assessment to satisfy the judgment, and further provided that, upon failure or refusal of the District to make provision for payment by levying and collecting assessments, the Board of Supervisors and other county officials should do so. At the time we discussed the matter with Attorney L. C. Smith, in Redding, who represents the Irrigation District.

Since my return to Sacramento, I have checked the record in the case, and have also discussed it further with Attorney Stephen W. Downey, with whom the Chairman of the Board of Directors conferred concerning this default judgment. Mr. Downey sent me a copy of a letter which he had sent to Attorney Smith, and for your information, I send you enclosed a copy of that letter.

From our phone conversation on September 17, 1946, I understand that neither nor any of the County officials were served with a copy of this default judgment until after the tax rate for the County of Tehama had been fixed. We feel that the provisions in the judgment concerning the levying and collecting of an assessment are beyond the prayer of the judgment, and therefore, ineffective, particularly in view of the fact that neither the County nor any of the County officers were made parties to the proceeding or brought before the court by any process whatsoever.

We also feel that because of the fact that the judgment was not called to the attention of the County until after the fixing of the rate, that the County could not, in any way, be held guilty of a contempt for having failed to levy and collect an assessment. [22]

Accordingly, we do not believe that the County is required to do anything at this time, particularly in view of the doctrine of such cases as *El Camino Land Corporation vs. The Board of Supervisors of Tehama County*, 43 Cal. App. (2d) 351, and *City of Asbury Park vs. Christmas*, 78 Fed. (2d) 1003, wherein writs of mandate were denied solely because to have exacted the assessment would have produced economic chaos and would have been inequitable.

We strongly urge, however, that the Board of Supervisors and other County officials take this matter up with the Board of Directors of the Irrigation District and impress upon them the need to

work out a solution of their financial difficulties, because it is quite possible that, in proper proceedings, the County could be compelled to levy and collect an assessment to discharge such obligations.

With kindest personal regards, we are

Yours very truly,

ROBERT W. KENNY,

Attorney General.

By /s/ E. G. BENARD,

Deputy Attorney General.

EGB P

cc Attorney L. C. Smith

Attorney Stephen W. Downey. [23]

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[Title of District Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT  
OF DEMURRER

Glenn vs. Mitchell Co., 282 Fed. 440;

Securities Co. vs. Van Loben Sels, 13 Cal. App.  
2nd, 265-269;

14 Cal. Jur. Page 906 and 10 Year Sup.;

Section 26550-26553, inclusive, Water Code of  
California.

[Endorsed]: Filed Aug. 14, 1947.



[Title of District Court and Cause.]

### NOTICE AND DEMAND

To the Board of Supervisors of Tehama County,  
California:

You and each of you are hereby advised that the Directors of the El Camino Irrigation District have failed to levy any assessment for the purpose of satisfying the judgment in this case, and have failed to take any other action looking toward payment thereof, and there having been served upon you certified copies of the judgment in this case, demand is made that you forthwith levy assessments as provided in said judgment for the purpose of paying the same, and you are further advised that if you continue to fail to make such levy, application will be made to the Federal Court for an order citing you for contempt of court for failing to carry out the provisions of said judgment.

You are further advised that not only does the judgment require you to do these things, but the laws of the State of California require you to do so, and put you upon notice of the failure of the irrigation district to levy the assessments provided in the statute, and that it will be the position of the plaintiff in this case, that you have knowledge of the failure of the El Camino Irrigation District and its Officers to levy any assessments for bond interest or principal over the past ten years.

Dated: January 2, 1946.

W. COBURN COOK,

Attorney for Plaintiff. [25]

State of California,  
County of Sacramento—ss.

John P. Ryan, being first duly sworn says: that he is a citizen of the State of California and over the age of 21 years and not a party to the above entitled action; that on or about the 3rd day of January, 1947, he served the within Notice upon the Board of Supervisors of Tehama County, California by delivering to and leaving with A. E. Davis, Clerk of the Board, B. A. Osborn, Chairman, W. E. Rockford, Assessor and Tax Collector (served Jan. 4, 1947) a copy of said notice, personally in the County of Tehama.

JOHN P. RYAN.

Subscribed and sworn to before me this 18th day of August, 1947.

[Seal] M. B. BROWN,  
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Aug. 18, 1947. [26]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of California,  
County of Tehama—ss.

J. N. Frome, being duly sworn, says:

That he is the Sheriff of the County of Tehama, State of California, and as such Sheriff received the Order to Show cause herein on the 2nd day of August, 1947, and personally served the same on the 4th day of August, 1947 upon each of the following, to wit: B. A. Osborn, S. E. Ayer, J. P. Burton, Walter Mayes, Walter Bunting, members of Tehama County Board of Supervisors, by delivering to and leaving with each of the within named parties personally in the County of Tehama, State of California, a certified copy of said Order to Show Cause and a copy of Affidavit therein referred to.

J. N. FROME.

Subscribed and sworn to before me this 7th day of August, 1947.

[Seal]

IRMA STALL,

Notary Public.

[Endorsed]: Filed Aug. 18, 1947. [27]

In the District Court of the United States, Northern  
District of California, Northern Division

No. 5082 Civ.

PUEBLO TRADING CO., a corporation,  
Plaintiff,  
vs.

EL CAMINO IRRIGATION DISTRICT, a public  
corporation,  
Defendant.

### OPINION AND ORDER

Plaintiff recovered a judgment against defendant by default for the payment of a sum of money due and owing on outstanding bonds of defendant irrigation district. The judgment provided that the money be obtained by the defendant through assessment, and that in the event that defendant's board of directors failed to act that the Board of Supervisors of Tehama County should make provision for the payment of this sum in the manner provided by Division 11 of the Water Code of the State of California. There being no activity by defendant or the Board of Supervisors, an order to show cause why the Board of Supervisors of Tehama County should not be held in contempt of the order of this court was issued herein. The Board of Supervisors demurred to the affidavit for order to show cause on the ground that the judgment goes beyond the complaint, and further that neither the county nor any part of its officers were parties



to this suit and that the plaintiff should pursue the remedies provided by Sections 25650 to 25653 of the Water Code of the State of California.

Plaintiff bases its argument in support of its theory that the Board of Supervisors were in contempt primarily upon the case of "Board of Supervisors of Riverside County vs. Thompson" 122 Fed. 860. That case is clearly distinguishable from ours. There a money judgment had been obtained in a prior action against an irrigation district and the judgment remained unsatisfied. The judgment creditor brought a second action seeking a mandate requiring the board of supervisors to make a levy sufficient to satisfy the judgment. In the second action the board of supervisors was afforded due process. The members of the board were parties to that action. They could there present any available legal defense.

For a board of supervisors to be in contempt of this court they would have had to have been afforded notice and an opportunity to be heard before this court would have jurisdiction to render a judgment requiring the members thereof to perform their statutory duty and for the failure to perform which the contempt is sought. Until that time they would not have been afforded their constitutional guarantee of "due process." "The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause." 12 Am. Jur. Sec. 573.

The Board of Supervisors not being parties to this action this court had no jurisdiction over them, and as there was no jurisdiction over the board at the institution of this proceeding the Board of Supervisors can not now be held [29] in contempt for failing to perform a requirement in the judgment. "Due process is not a yard stick of definite value; it has been said to be 'merely an embodiment of the English sporting idea of fair play'." *Peo vs. Tilkin* 34 C.A. 2d Supp. 743.

The contempt proceeding is dismissed.

Dated: September 23, 1947.

DAL M. LEMMON,

United States District Judge.

[Endorsed]: Filed Sept. 23, 1947.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Circuit Court of Appeals for the Ninth  
Circuit (Under Rule 73)

Notice Is Hereby Given that Pueblo Trading Co., a corporation, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Opinion and Order made and filed herein on September 23, 1947 and from the whole thereof.

Dated: October 28, 1947.

W. COBURN COOK,

Attorney for Appellant.

[Endorsed]: Filed Nov. 3, 1947. [31]

[Title of District Court and Cause.]

STATEMENT OF POINTS AND ASSIGN-  
MENT OF ERRORS ON APPEAL

The appellant, Pueblo Trading Co., a corporation, makes the following assignment of errors which it avers occurred in the determination of this proceeding and in the rendering of the Opinion and an Order appealed from, and states that the points on which it intends to rely on the appeal of this cause are the following:

1. The court erred in making and entering the order dated September 23, 1947 dismissing the contempt proceedings.

2. The court erred in purging the officers of Tehama County of contempt.

3. The court erred in holding and determining that the officers of the County of Tehama were not afforded due process.

4. The court erred in holding and determining that the officers of the County of Tehama were necessary parties to the action or should have been served with notice before entry of the judgment.

5. The court erred in permitting the officers of Tehama County to in effect nullify the judgment by means of a demurrer to the contempt proceedings, the time for appeal having expired and the time to modify or set aside the judgment having expired



and the said parties having had notice of the entry of the judgment against them.

Dated: November 7, 1947.

W. COBURN COOK,  
Attorney for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Nov. 8, 1947. [33]

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF  
RECORD ON APPEAL

Appellant Pueblo Trading Co., a corporation, designates the following as those parts of the record as necessary for the consideration of the points on which appellant intends to rely on this appeal and for printing, to wit:

1. Complaint.
2. Judgment by Default.
3. Affidavit of H. R. Anderson dated Feb. 2, 1945.
4. Affidavit of W. Coburn Cook dated June 9, 1947.
5. Order to Show Cause dated July 7, 1947.
6. Notice and Demand dated January 2, 1946.
7. All proofs of service, including proofs of service dated August 7, 1947.
8. Opinion and Order dated September 23, 1947.

9. Notice of Appeal.
  10. Statement of Points and Assignment of Errors on Appeal.
  11. This Designation of Contents of Record on Appeal.
  12. Demurrer to Affidavit for Order to Show Cause and Affidavit of Edmund M. Moor.
- Dated: November 7, 1947.

W. COBURN COOK,  
Attorney for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Nov. 8, 1947. [34]

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CERTIFICATION OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 34, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of Pueblo Trading Co., a corporation, vs. El. Camino Irrigation District, a public corporation, No. 5082, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Designation of Contents of Record on Appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the

sum of Five and 40/100 (\$5.40), and that the same has been paid to me by the attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and the official seal of said District Court, this 22nd day of November, A.D. 1947.

[Seal]                      C. W. CALBREATH,  
Clerk.

By /s/ F. M. LAMPERT,  
Deputy Clerk.

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[Endorsed]: No. 11798. United States Circuit Court of Appeals for the Ninth Circuit. Pueblo Trading Co., a corporation, Appellant, vs. El Camino Irrigation District, a public corporation; B. A. Osborn, S. E. Ayer, J. P. Burton, Walter Mayes and Walter Bunting, Members of the Board of Supervisors of Tehama County, and W. E. Rochford, Assessor of Tehama County, California, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed November 24, 1947.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11798

PUEBLO TRADING CO., a corporation,  
Appellant,  
vs.

EL CAMINO IRRIGATION DISTRICT,  
a public corporation,  
Appellee.

STATEMENT OF POINTS ON WHICH AP-  
PELLANT INTENDS TO RELY ON AP-  
PEAL

The appellant adopts as the points on appeal on which it intends to rely, the Statement of Points and Assignment of Errors on Appeal designated and filed in the United States District Court

Dated: November 25, 1947.

/s/ W. COBURN COOK,  
Attorney for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Nov. 28, 1947.



[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD  
ON APPEAL AND FOR PRINTING

The appellant designates as those parts of the record as necessary for the consideration of the points upon which the appellant intends to rely in this appeal and for printing the entire record on appeal as designated in the United States Circuit Court of Appeal.

Dated: November 25, 1947.

/s/ W. COBURN COOK,  
Attorney for Appellant.

[Affidavit of service by mail attached.]

[Endorsed]: Filed Nov. 28, 1947.

